



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7650-99

3 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 2 August 1971 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served for 13 months without incident. However, during the months of September and October 1972 you received two nonjudicial punishments for failure to go to your appointed place of duty and drinking in the barracks. The medical record reflects that on 12 March 1973 you were placed into a local alcohol rehabilitation program but were subsequently dropped due to a lack of interest and motivation. You were counseled regarding the drinking problem and warned that failure to take corrective action could result in processing for an administrative separation. On 3 April 1973 you were diagnosed as an alcohol abuser who was psychologically dependent.

The record further reflects that 21 April 1973 you were medically transferred from Okinawa to Great Lakes, IL for inpatient alcohol rehabilitation treatment. However, on 23 April 1973 you received

your third NJP for disrespect and were released from treatment on 31 May 1973.

During the period from August to October 1973 you received your fourth NJP and were convicted by a special court-martial. The offenses were disobeying a lawful order, failure to go to your appointed place of duty, use of reproachful words, and assault. Thereafter, you were again counseled regarding your drinking problem and frequent involvement with military authorities.

On 3 September 1974 you were reported in an unauthorized absence (UA) status, and you remained absent until you surrendered to military authorities on 14 February 1975. On 11 March 1975 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for this 164 day period of UA. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 12 March 1975 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 21 March 1975.

On 8 September 1976 and 21 November 1980 the Naval Discharge Review Board (NDRB) denied your requests for recharacterization of discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and need for veterans benefits, and the fact that it has been nearly 25 years since you were discharged. The Board noted the issues addressed by the NDRB and your current contentions that the NJPs and court-martial were for minor offenses and were the result your alcoholism. The Board also note your belief that the NDRB unfairly denied your requests for an upgrade because at the time President Carter was offering clemency to all personnel from the Vietnam era. The Board noted that Presidential Clemency Program was announced in September 1974 and a clemency board was established to hear the appeals of veterans with other than honorable discharges for absence-related offenses. Upon completion of alternative service, an undesirable discharge would be changed to a clemency discharge. However, the amnesty and clemency discharge programs and those discharges upgraded by the Special Discharge Review Program met with adverse congressional reaction and led to the enactment of legislation that precluded veterans' benefits to any individual whose discharge was upgraded under any program with automatic upgrading criteria. Such cases had to be re-reviewed under newly adopted uniform standards to determine whether the individual's service would have been

upgraded under a regular NDRB review. The newly adopted uniform standards were in force when you applied and the NDRB determined that your discharge was proper and equitable.

The Board concluded that recharacterization of your discharge was not warranted given your record of four NJPs and a special court-martial conviction, and the fact that you accepted discharge rather than face trial by court-martial for a prolonged period of UA of more than four months. The Board noted your contentions that your disciplinary problems were the result of alcoholism. However, alcohol abuse does not excuse misconduct. The Board believed that considerable clemency was extended to you when the request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director